

Hearing Date: May 21, 2018 at 1:30 p.m. (A.S.T./E.S.T.)

Proposed Opposition to Joinder Deadline: May 7, 2018

Proposed Reply to Joinder Deadline: May 14, 2018

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT  
BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, et al.,

Debtors.<sup>1</sup>

PROMESA  
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT  
BOARD FOR PUERTO RICO,

as representative of

PUERTO RICO ELECTRIC POWER AUTHORITY,

Debtor.

PROMESA  
Title III

Case No. 17 BK 4780-LTS

**Court Filing Relates Only to  
PREPA and Shall Only be  
Filed in Case Nos. 17 BK  
3283-LTS, 17 BK 4780-LTS**

**JOINDER OF ASSURED GUARANTY CORP., ASSURED GUARANTY  
MUNICIPAL CORP., NATIONAL PUBLIC FINANCE GUARANTEE  
CORPORATION, THE AD HOC GROUP OF PREPA BONDHOLDERS,  
SYNCORA GUARANTEE INC., AND U.S. BANK NATIONAL ASSOCIATION,  
IN ITS CAPACITY AS PREPA BOND TRUSTEE TO MOTION TO COMPEL  
COMPLIANCE WITH FEBRUARY 26, 2018 ORDER AND FOR ENTRY OF A  
PROTECTIVE ORDER OF AD HOC GROUP OF GENERAL OBLIGATION  
BONDHOLDERS, AMBAC ASSURANCE CORPORATION, ASSURED  
GUARANTY CORP., ASSURED GUARANTY MUNICIPAL CORP., THE MUTUAL  
FUND GROUP, AND NATIONAL PUBLIC FINANCE GUARANTEE CORPORATION**

<sup>1</sup> The Debtors in these Title III cases, along with each Debtor's respective Title III case number listed as a bankruptcy case number due to software limitations and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico ("Commonwealth") (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747).

**TO THE HONORABLE COURT:**

Assured Guaranty Corp. (“AGC”), Assured Guaranty Municipal Corp. (“AGM” and together with AGC, “Assured”), National Public Finance Guarantee Corporation (“National”), the Ad Hoc Group of PREPA Bondholders, Syncora Guarantee Inc., and U.S. Bank National Association, in its capacity as PREPA Bond Trustee (collectively, the “PREPA Movants”) respectfully join the *Motion to Compel Compliance with February 26, 2018 Order and For Entry of a Protective Order of Ad Hoc Group Of General Obligation Bondholders, Ambac Assurance Corporation, Assured Guaranty Corp., Assured Guaranty Municipal Corp., the Mutual Fund Group, and National Public Finance Guarantee Corporation* (ECF No. 2865) (“Motion to Compel”) filed by Assured, National, the Ad Hoc Group of General Obligation Bondholders, Ambac Assurance Corporation, and the Mutual Fund Group (collectively, the “Commonwealth Movants”) against The Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”) and the Financial Oversight and Management Board for Puerto Rico (“Oversight Board”).<sup>2</sup>

**INTRODUCTION**

1. The PREPA Movants join the Motion to Compel because the Puerto Rico Electric Power Authority (“PREPA”) is taking the same positions in pending Rule 2004 discovery regarding the PREPA fiscal plans that the Commonwealth of Puerto Rico (the “Commonwealth”), AAFAF and the Oversight Board are taking in pending Rule 2004 discovery regarding fiscal plans for PREPA, the Commonwealth and other instrumentalities.<sup>3</sup> As a result

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<sup>2</sup> Capitalized terms not defined herein are defined in the Motion to Compel. “ECF No.” refers to filings in No. 17 BK 3283-LTS, unless otherwise noted.

<sup>3</sup> The PREPA Movants reserve any and all rights to seek additional discovery from PREPA, Commonwealth, AAFAA, the Oversight Board or any other party.

of the unsupported positions of the Commonwealth, AAFAF and the Oversight Board, the Commonwealth Movants were forced to file the Motion to Compel.

2. The Motion to Compel seeks the production of “Fiscal Plan Development Materials” that are sought by the Commonwealth Movants in Requests Nos. 8, 16 and 17 of their document requests (the “Commonwealth 2004 Requests”). Fiscal Plan Development Materials are the models, formulae, and assumptions underlying all of the fiscal plans published in 2017 and 2018. See ECF No. 2865 at 2-3. Thus, Fiscal Plan Development Materials include material underlying the PREPA fiscal plans. Indeed, Request No. 20 of the PREPA Movants’ documents requests (the “PREPA 2004 Requests”) seeks exactly the same material regarding the PREPA fiscal plans as does Commonwealth 2004 Request No. 16.

3. Following the filing of the Motion to Compel, counsel for PREPA confirmed it will take the same positions regarding the production of Fiscal Plan Development Material that the Commonwealth, AAFAF and the Oversight Board are taking. Given that PREPA, the Commonwealth, AAFAF and the Oversight Board are taking the same positions, the PREPA Movants join the Motion to Compel to ensure that the issues are briefed and argued together in the interests of efficiency and economy for both the Court and the parties.<sup>4</sup> Counsel for PREPA has informed the PREPA Movants that PREPA would not object to the joinder of such issues with those raised in the Motion to Compel.

4. For the reasons set forth herein, the PREPA Movants respectfully request that the Court permit joinder of these issues and grant the relief requested in the Motion to Compel as to PREPA and compel PREPA to produce all of the Fiscal Plan Development Materials identified in Exhibit A, attached hereto, as well as any future Fiscal Plan Development Materials.

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<sup>4</sup> Certain of the Commonwealth Movants are also PREPA Movants, including Assured and National.

**A. The PREPA 2004 Requests and Commonwealth 2004 Requests**

5. On January 17, 2018, Magistrate Judge Judith Gail Dein entered a *Stipulation and Order Authorizing Rule 2004 Examination* (Case No. 17 BK 4780-LTS, ECF No. 538), that authorized the PREPA Movants to serve the PREPA 2004 Requests. The PREPA 2004 Requests are attached hereto as Exhibit B. To date, PREPA has not produced any documents in response to the PREPA 2004 Requests outside of the Intralinks data room (the “Data Room”). Thus, documents in the Data Room that are responsive to the PREPA 2004 Requests continue to be subject to non-disclosure agreements or the Mediation Agreement.

6. Certain of the PREPA 2004 Requests request either the same information or a subset of information also requested in the Commonwealth 2004 Requests, which are attached hereto as Exhibit C. Specifically, PREPA 2004 Request Nos. 1, 3, 4, 19, and 20 (see Ex. B at 9-10, 13) overlap with Commonwealth 2004 Request Nos. 2, 3, 4, 10, and 16, respectively. See Ex. C at 11, 12, 14.

7. Fiscal Plan Development Materials are sought in Commonwealth 2004 Request Nos. 8, 16 and 17. Commonwealth 2004 Request No. 16 specifically requests material underlying the PREPA fiscal plans:

To the extent not already produced or requested above, any inputs, calculations, or formulae underlying (i) the Fiscal Plan for Puerto Rico certified on March 13, 2017, and the ***Puerto Rico Electric Power Authority Fiscal Plan certified on April 28, 2017***, (ii) revisions to either of such fiscal plans, and (iii) forthcoming fiscal plans for the Commonwealth, ***PREPA***, PRASA, and any instrumentality when and as submitted (and/or resubmitted) to the Oversight Board, together with copies of such forthcoming fiscal plans when and as submitted (and/or resubmitted) to the Oversight Board.

Ex. C at 14 (emphasis added).

8. PREPA 2004 Request No. 20 requests the same material:

To the extent not already produced or requested above, any inputs,

calculations, or formulae underlying (i) the PREPA Fiscal Plan certified on April 28, 2017, (ii) revisions to such Fiscal Plan, and (iii) any forthcoming fiscal plan for PREPA when and as submitted to the Oversight Board, together with copies of such forthcoming fiscal plan when and as submitted (and/or resubmitted) to the Oversight Board.

Ex. B at 13.

**B. Refusal of PREPA, the Commonwealth, AAFAF and the Oversight Board to Produce Fiscal Plan Development Materials**

9. On February 26, 2018, Judge Dein issued an Order (the “February 26 Order”) finding that “Fiscal Plan Development Materials qualify as the type of materials that are discoverable under Rule 2004.” ECF No. 2590 at 2. Judge Dein ordered that Fiscal Plan Development Materials should be produced or deemed produced pursuant to Rule 2004, subject to a protective order. Judge Dein also held that Commonwealth Movants could attempt to offer Fiscal Plan Development Materials in the Title III or adversary proceedings but that the Commonwealth, AAFAF and the Oversight Board could object to the use or admissibility of such documents. Id. at 11. As set forth above, Fiscal Plan Development Materials includes materials underlying PREPA’s fiscal plans.

10. In contravention of the February 26 Order, as set forth in the Motion to Compel, the Commonwealth, AAFAF and the Oversight Board have refused to produce any (i) Fiscal Plan Development Materials under Rule 2004 or (ii) Fiscal Plan Development Materials outside of the Data Room. As a result, the Commonwealth Movants filed the Motion to Compel.

11. PREPA has taken the same positions with regard to Fiscal Plan Development Materials. On April 17, 2018, the PREPA Movants sent PREPA a list of *seven* documents in the Data Room that they had identified as Fiscal Plan Development Materials requested in the PREPA 2004 Requests. See Ex. A. The documents include certain of the documents sought in

the Motion to Compel as well as other documents.<sup>5</sup> To date, PREPA has refused to either produce these documents outside the Data Room or deem them produced under Rule 2004. Thus, like the Commonwealth, AAFAF and Oversight Board, PREPA has refused to (i) produce any Fiscal Plan Development Materials under Rule 2004 and (ii) remove any Fiscal Plan Development Materials from the Data Room.<sup>6</sup>

12. The designation of these seven documents as produced under Rule 2004—and the subsequent requirement to designate these documents as confidential or not confidential—is critical. Like the principals at issue in the Motion to Compel, many of the PREPA Movants’ principals are not restricted and therefore cannot receive material non-public information. Counsel to the PREPA Movants require designation of the documents under the protective order so that they can share information with certain of their respective clients. Only then can those clients act appropriately to protect their rights throughout the entirety of the Title III proceedings, including the period before a plan of adjustment is proposed and becomes the subject of a contested matter.

### **PRIOR COMMUNICATIONS**

13. Before filing this joinder, counsel for the PREPA Movants and PREPA made reasonable, good faith efforts to resolve the issues raised herein, but no agreement could be

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<sup>5</sup> The Oversight Board and AAFAF represented that Document 1.2.6 “may be used subject to a protective order” (see Mot. to Compel, Ex. E at 2) but have not agreed to enter into a protective order as set forth in the Motion to Compel. Document 2.8.3.1 is also sought in the Motion to Compel.

<sup>6</sup> Unlike the Commonwealth Movants, the PREPA Movants are not seeking entry of a protective order because the PREPA Movants, PREPA, the Commonwealth, AAFAF and the Oversight Board previously stipulated to and the Court entered a *Stipulation and Protective Order* that would cover any material produced in response to the PREPA 2004 Requests. See Case No. 17 BK 04780-LTS, ECF No. 708. PREPA also has confirmed that it will produce a privilege log to the PREPA Movants of the documents requested in the PREPA 2004 Requests that PREPA is withholding from production.

reached. Counsel for the PREPA Movants notified counsel for PREPA of their intention to seek relief from the Court and requested agreement regarding a briefing schedule. The Motion to Compel is scheduled to be heard on May 21, 2018 at 1:30 p.m. in Boston, Massachusetts. See ECF No. 2889 at 2. As such, the PREPA Movants and PREPA jointly propose that any opposition filed by PREPA must be filed on or before May 7, 2018, and that any reply to PREPA's opposition must be filed on or before May 14, 2018.<sup>7</sup>

### **CONCLUSION**

14. For the reasons set forth in the Motion to Compel and herein, pursuant to Rule 2004 and the February 26 Order, the Court should grant the relief requested in the Motion to Compel as to PREPA and compel PREPA to produce all of the Fiscal Plan Development Materials identified in Exhibit A, attached hereto, as well as any future Fiscal Plan Development Materials.

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<sup>7</sup> In order to give PREPA additional time to respond, this proposed briefing schedule differs from the Scheduling Order entered by the Court, which orders any opposition to the Motion to Compel be filed on or before April 23, 2018, and that any reply to the Motion to Compel be filed on or before April 30, 2018. See ECF No. 2889 at 1-2.

Dated: New York, New York  
April 23, 2018

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**CERTIFICATE OF SERVICE**

I hereby certify that I filed this document electronically with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to all parties of record in the captioned case. Further, I directed that the following counsel of record be served by U.S. Mail:

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At New York, New York, 23rd day of April, 2018.

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